

JOHN F. CLIFTON

IBLA 83-642

Decided July 24, 1984

Appeal from decision of Wyoming State Office, Bureau of Land Management, which denied the appellant's petition to reinstate oil and gas lease W-67011.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

The Secretary has no authority, under 30 U.S.C. § 188(c) (1982), to reinstate a lease terminated for failure to pay rentals timely unless payment has been made within 20 days of lease termination.

2. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination -- Payments: Generally

The Secretary may reinstate leases terminated on or after Jan. 12, 1983, if certain conditions are met and a petition for reinstatement plus required back rentals are filed the earlier of 60 days after lessee has received notice of termination or 15 months after lease termination. The submission of a rental check which is later dishonored by the drawee bank because of insufficient funds is neither a payment nor a tender of payment.

APPEARANCES: John F. Clifton, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

John F. Clifton appeals a May 4, 1983, decision of the Wyoming State Office, Bureau of Land Management (BLM), which denied appellant's petition to reinstate oil and gas lease W-67011. The lease was terminated automatically on April 1, 1983, because of appellant's failure to make a timely rental payment.

Rental payment of \$400 was due April 1, 1983, the lease anniversary due date, in the Wyoming State Office, BLM, for oil and gas lease W-67011. Although a check for the rental payment was received by BLM on April 4, 1983, the lease terminated automatically on April 1, 1983, by operation of law, for

failure to pay timely the annual rental. Section 31(b) of the Mineral Leasing Act, as amended, provides: "[U]pon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil or gas in paying quantities, the lease shall automatically terminate by operation of law." 30 U.S.C. § 188(b) (1982).

On April 14, 1983, appellant petitioned BLM to reinstate the lease on grounds that the mailing of rental payments from Atlanta, Georgia, to Cheyenne, Wyoming, "five days prior to the due date," constituted reasonable diligence. BLM denied the petition to reinstate the lease on the grounds that appellant was not reasonably diligent the postmark indicated that payment was mailed on March 30, rather than March 28, as alleged by the lessee, and the late payment was not justifiable, pursuant to 43 CFR 3108.2-1(c). Subsequent to appellant's filing a petition for appeal, BLM, in a May 10, 1983, letter, notified appellant that check 794, submitted for rental payment on lease W-67011, had been returned by the bank as uncollectible. Appellant has not commented to the Board concerning the dishonored check.

There is no evidence that appellant tendered a second rental payment subsequent to the BLM notice of nonpayment. The Secretary has no authority to reinstate leases under 30 U.S.C. § 188(c) unless full payment of back rentals has been made to the proper office within 20 days of termination of the lease. Harriet C. Shaftel, 79 IBLA 228 (1984); Allyson A. Allison, 72 IBLA 333 (1983); Pegasus Petroleum Corp., 71 IBLA 216 (1983). Therefore, BLM had no authority to reinstate appellant's lease.

The Secretary may reinstate leases terminated on or after January 12, 1983, if certain conditions are met and a petition for reinstatement plus the required back rentals are filed on or before "the earlier of -- (i) sixty days after the lessee receives from the Secretary notice of termination, whether by return of check or by any other form of actual notice, or (ii) fifteen months after termination of the lease." 30 U.S.C. § 188(d) (1982). There is no evidence that appellant tendered payment of delay rentals within 60 days of receipt of the returned check or other actual notice of the termination. Therefore, the Secretary may not grant reinstatement of the lease pursuant to this provision. Harriet C. Shaftel, *supra*.

Appellant challenged BLM's decision to decline to reinstate the lease on the basis that although the rental payment was not timely, appellant exercised reasonable diligence in making the payment. The statute appellant appears to have invoked provides:

[W]here any lease has been or is hereafter terminated by operation of law under this section for failure to pay on or before the anniversary date the full amount due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease * * *.

30 U.S.C. § 188(c) (1982).

This Board need not address the "reasonable diligence" issue because 30 U.S.C. § 188(c) requires payment of rental within 20 days of the anniversary date of the lease. The submission of a check which is later dishonored by the bank because of insufficient funds is neither a payment nor a tender of payment. Caroline L. Hunt, 43 IBLA 314 (1979). Appellant failed to meet that 20-day requirement. The Board affirms the BLM decision to deny appellant's petition to reinstate the lease. While this Board's affirmation is based on evidence outside that considered by BLM in making its decision, the Board is acting within its plenary authority to review de novo all evidence of record pertaining to an appeal within its jurisdiction. United States Fish and Wildlife Service, 72 IBLA 218 (1983).

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

James L. Burski
Administrative Judge.

